IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2004

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice

and

The Honourable Mr.Justice N.V.BALASUBRAMANIAN

Writ Appeal No. 1910 of 2004

1. Management of GE Power Controls India (Pvt) Ltd.,
   rep. by its Managing Director,
   Plot No.42/1, 43/14, Phase II,
   Electronic City, Bangalore - 561 229.

2. G.L.Rangekar, Director - Operations,
   GE Power Controls India (Pvt) Ltd.,
   46, SIPCOT Industrial Complex,
   Hosur - 635 126. :: Appellants/RR 1 & 2

Vs.

1. Workmen of GE Power Controls India Pvt Ltd.
   rep. by G.E Employees Welfare Association,
   through its General Secretary,
   Mr.C.Parthiban, No.76/616, Phase X,
   TNHB, Royakotta Road,
   Hosur - 635 109.

2. GE Lighting India Pvt. Ltd.,
   rep. by its Managing Director,
   Dharaminh Park, Malawada Road,
   Limbasi Taluk, Matar, Gujarat.

3. Government of Tamil Nadu,
   Rep. by its Secretary,
   Department of Industries and Labour,
   Fort.St.George, Chennai - 9. ::: Respondents/Petitions & RR 3 & 4

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Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No. 5898 of 2004 dated 26.4.2004.

For Appellant :: Mr.A.L.Somayaji
Senior Counsel for
M/s. Gupta & Ravi.

For Respondents
1 :: Mr.V.Prakash,
Senior counsel for
Mr.P.Chandrasekaran

For Respondent 3:: Mr.V.Raghupathy
Government Pleader

J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 26.04.2004.

2. Heard the learned counsel for the parties.

3. We have perused the judgment of the learned single Judge and other papers, and are of the opinion that the said judgment cannot be sustained.

4. The writ petitioner had prayed for a writ of declaration to declare that portion of the notice of the respondents in the writ petition (the present appellants), by which the appellants required its workmen listed in the annexure to it to report at Limbasi, Gujarat to work under the third respondent in the writ petition, namely, M/s.G.E. Lighting India Pvt. Ltd to be illegal and unenforceable. The consequent individual order of transfers issued to the members of the writ petitioner union were also challenged.

5. The writ petitioner is a trade union and the first respondent is a company running a factory at No.46, SIPCOT Industrial Complex, Hosur, Tamil Nadu where the members of the petitioners union were employed. The writ petitioner alleged that there was a wage settlement entered into by the petitioner union and the first respondent on 10.09.1999 for a period of three years, which expired on 04.08.2002. It was alleged that the first respondent company had been removing production machinery from Hosur plant to Pondicherry and Karanataka plant gradually after the wage settlement. The first respondent company had applied for permission for lay off under Section 25 M of the Industrial Disputes Act, which was rejected on 17.10.2000.

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6. Admittedly, there is a provision in the certified Standing Orders of the first respondent company that the employees are required to be transferred any where in India. On 03.09.2002, lock out was imposed by the first respondent company, which was lifted by the impugned notice dated 02.03.2004.

7. The writ petitioner union submitted a memorandum dated 21.08.2002 to the Labour Commissioner raising the dispute of wage and lockout. It was alleged in the writ petition that the Joint Commissioner of Labour without any request from the writ petitioner union was seeking to include the issue of transfer of workmen to Limbasi in the failure report.

8. Mr.V.Prakash, learned senior counsel who appeared for the petitioner union in the writ petition submitted before the learned single judge that the management taking advantage of the clause available in the Certified Standing orders that the workmen are liable to be transferred to any place, is seeking to transfer them to GE Lighting India Pvt. Ltd, which is a different entity.

9. Admittedly, the appellant company G.E Power Control India Pvt. Ltd. and GE Lighting India Pvt. Ltd have come under one management from 01.01.2004. As a result of the aforesaid decision, all the workmen of the Hosur factory in Tamil Nadu have been relocated to the new manufacturing facility of the company at Limbasi in Gujarat giving them relocation benefits with effect from 03.03.2004. It was alleged by Mr.V.Prakash, learned senior counsel before the learned single Judge that various provisions of the Industrial Disputes Act have been violated by the impugned decision.

10. Before dealing with the submissions made by the learned counsel for the parties, we may mention that ordinarily no writ lies against a private body except a Writ of Habeas Corpus vide Praga Tools Corp. Vs. Imanuel (AIR 1969 SC 1306), C.M.Khanna vs. NCERT (AIR 1992 SC 76) Ganga Saran Vs Civil Judge (1991 (1) AWC 213), and Tek Raj Vasandi vs. Union of India (1988 (1) SCC 236) etc. There are no doubt certain exceptions to this rule, but that is the ordinary rule.

Article 226 (1) of the Constitution states:-

> " Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or

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any of them for the enforcement of any of the rights conferred by Part II and for any other purpose"

11. The language of Article 226 is no doubt very wide. It states that a writ can be issued 'to any person or authority' and ' for enforcement of right conferred by Part III and for any other purpose'. However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting Article 226. If we take the language of Article 226 literally it will follow that a writ can be issued to any private person or to settle even private disputes. If we interpret the word ' for any other purpose' literally it will mean that a writ can be issued for any purpose whatsoever, e.g. for deciding private disputes, for grant of divorce, succession certificate etc. Similarly, if we interpret the words ' to any person' literally it will mean that a writ can even be issued to private persons. However, this would not be the correct meaning in view of various decisions of the Supreme Court in which it was held that a writ will lie only against the State or instrumentality of the State vide Chander Mohan Khanna v. N.C.E.R.T (1991) (4) SCC 578, Tekraj Vasandhi v. Union of India AIR 1988 SC 496, General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad (2003) 8 SCC 639, Federal Bank Ltd. v. Sagar Thomas & Co. (2003) 10 SCC 733, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others (2002 (5) SCC 111) etc. In General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad (supra), the Supreme Court observed that a writ will lie against a private body only when it performed a public function or discharged a public duty. In our opinion the appellant is not performing a public function nor discharging a public duty. It is only doing commercial activity. Hence, no writ lies against it.

12. The correct interpretation of the aforesaid words in Article 226 is that a writ can ordinarily be issued to a person to whom writs were traditionally issued by British Courts on well established principles. Similarly, the words, ' for any other purpose' have to be interpreted in the narrower sense to mean that a writ can be issued for the purpose for which writs were traditionally issued by British Courts on well established principles. The British Courts did not ordinarily issue writs to private persons except a writ of habeas corpus.

13. No doubt the power to issue writs under Article 226 is wider than those of the British Courts vide Dwarika Nath v. ITO (AIR 1966 SC 81), but in our opinion they are not so wide as to permit Judges to do anything they like in writ jurisdiction. There are well settled principles governing the exercise of power under Article 226 as laid down in various decisions of the Supreme Court, and these principles have laid down several limitations to the exercise of such power. For instance, ordinarily a writ will not be issued to a private body except a writ of habeas corpus.

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14. In paragraph 4 of the counter affidavit filed by the present appellants in the writ petition it is stated:-

> " Even otherwise, I submit that the writ petition itself is not maintainable as against this respondent since this respondent is neither a State or other authority within the meaning of Article 12 of the Constitution of India and consequently no writ petition will lie against this respondent under Article 226 of the Constitution of India. This respondent being a private employer is not discharging any statutory or public duty and consequently, the writ as prayed for does not lie as against this respondent. Even on this ground the writ petition has to be summarily rejected"

15. In the rejoinder affidavit of the writ petitioner union there is no rebuttal to the allegation in paragraph 4 of the counter affidavit. Hence, the allegation in paragraph 4 of the counter affidavit that the appellant company (respondents in the writ petition) is a private body and is not a State under Article 12 of the Constitution is not rebutted and has to be taken as correct. In view of the above, the writ petition itself was not maintainable and should have been dismissed straightaway by the learned single Judge, as it was a writ petition filed against a private body, not discharging any public duty.

16. That apart, we have held in W.A.No. 3837 of 2004 dated 14.12.2004 that when there is allegation of violation of some provision of the Industrial Disputes Act, the only remedy for the workmen is to raise an industrial dispute under the Industrial Disputes Act, and get the matter referred to the Labour Court or Industrial Tribunal. No writ petition will directly be entertained without first approaching the forums under the Industrial Disputes Act. We reiterate the same view. In the above judgment, we have also referred to the decisions of the Supreme Court vide The Rajasthan State Road Transport Corporation v. Krishna Kant (AIR 1995 SC 1715) , U.P. State Bridge Corporation Ltd. v. U.P. Rajya Setu Nigam S.Karamchari Sangh (2004 (4)SCC 268) as well as the Full Bench decision of this Court in P.Pitchumani v. The Management of Sri Chakra Tyres Ltd (2004 (2) L.L.N. 1086). Hence, also the writ petition was not maintainable.

17. For the reasons stated above, this writ appeal is allowed, and the impugned judgment is set aside. The writ petition is dismissed. No costs.

Pv/

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However, if the writ petitioner raises an industrial dispute and it is referred, we direct the Industrial Tribunal to decide the same expeditiously.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

Copy to:

Government of Tamil Nadu,
Rep. by its Secretary,
Department of Industries and Labour,
Fort.St.George, Chennai - 9.

1 cc to M/s.Gupta & Ravi, Advocate Sr.No.55681

1 cc to Mr.P.Chandrasekaran, Advocate 55792

1 cc to Govt.Pleader, Sr.No.55861

pv[co]

kvd/23.12.2004

W.A.No.1910 of 2004

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